

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

DENNIS CLAY SHARPLESS,
(TDCJ-CID #564988)

Plaintiff,

vs.

FOOD SERVICE DEPARTMENT,

Defendant.

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CIVIL ACTION H-11-1164

MEMORANDUM ON DISMISSAL

Dennis Clay Sharpless, a Texas Department of Criminal Justice inmate, sued in March 2011, alleging a denial of proper nutrition. Sharpless, proceeding *pro se*, sues the Food Service Department of the Stiles Unit. He submitted neither a filing fee nor an *in forma pauperis* application. Because he did not submit a filing fee, and because of his litigation history in this and other Texas federal courts, the court presumes that Sharpless intends to proceed under 28 U.S.C. § 1915.

The threshold issue is whether Sharpless's claims are barred by the three-strikes provision of 28 U.S.C. § 1915(g). The court concludes that Sharpless's claims are barred. This case is dismissed, for the reasons stated below.

I. The Allegations in the Complaint

Sharpless alleges that prison officials at the Stiles Unit are not serving him coffee with his morning meal. He also complains of the denial of milk with his dry cereal. Sharpless seeks \$100,00.00 to purchase nutrition supplements.

II. Analysis

A prisoner is not allowed to bring a civil action *in forma pauperis* in federal court if three or more of his civil actions or appeals filed during his incarceration were dismissed as frivolous or malicious or for failure to state a claim upon which relief may be granted, unless he is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g).

Sharpless's litigation history reveals that before filing this action, he had at least three suits dismissed as frivolous. He has been sanctioned in the Southern, Eastern and Northern Districts of Texas. *Sharpless v. Thomas*, Civil Action Number 4:99-4250 (S.D. Tex.) (dismissed January 20, 2000); *Sharpless v. Whoever*, Civil Action Number 4:99-1550 (S.D. Tex.) (dismissed May 15, 1999); *Sharpless v. District Attorney*, Civil Action Number 3:99-1647 (N.D. Tex.) (dismissed September 9, 1999); and *Sharpless v. TDCJ-ID*, Civil Action Number 9:93-0058 (E.D. Tex.) (dismissed September 9, 1993). In Civil Action Number 99-1550, the court barred Sharpless from pursuing any more *in forma pauperis* actions because he had already accumulated seven frivolous dismissals in the United States District Court for the Eastern District of Texas. On dismissing that action under 28 U.S.C. § 1915(g), this court imposed a sanction of \$75.00 for his abuse of the judicial system. Sharpless has paid this sanction.

In Civil Action Number 99-4250, the court dismissed another of Sharpless's actions, noting that he accumulated five more dismissals under 28 U.S.C. § 1915(g) since the dismissal of Civil Action Number 99-1550. The court dismissed the action with prejudice and assessed an additional sanction of \$150.00. Sharpless has paid this sanction.

Since that time, Sharpless has continued to file *in forma pauperis* cases, only to have them dismissed under 28 U.S.C. § 1915(g). *Sharpless v. Supplie [sic] Clerk*, Civil Action Number 4:99-

1501 (S.D. Tex.) (dismissed July 15, 1999); *Sharpless v. Disciplinary Board*, Civil Action Number 4:99-3942 (S.D. Tex.) (dismissed January 12, 2000); and *Sharpless v. Simpson*, Civil Action Number 4:99-3573 (S.D. Tex.) (dismissed February 4, 2000). In Civil Action H-00-0515, the court dismissed the case with prejudice under 28 U.S.C. § 1915(g), and Sharpless was assessed a sanction of \$200.00 because of his continual filing of frivolous cases and his persistent contempt for court orders. Sharpless has paid this sanction.

In Civil Action Number 4:01-3960, the court imposed a monetary sanction of \$300. Sharpless had not paid this sanction. In 2001, Sharpless incurred eleven other monetary sanctions.

In the present case, Sharpless has not alleged, nor does his complaint demonstrate, that he is in imminent danger of serious physical injury. Sharpless is barred under 28 U.S.C. § 1915(g) from proceeding *in forma pauperis* in this action.

III. Conclusion

Sharpless's constructive motion to proceed as a pauper, (Docket Entry No. 1), is denied. The complaint is dismissed under 28 U.S.C. § 1915(g). All pending motions are denied.

The Clerk will provide a copy of this order by regular mail, facsimile transmission, or e-mail to:

(1) the TDCJ - Office of the General Counsel, Capitol Station, P.O. Box 13084, Austin, Texas, 78711, Fax: 512-936-2159;

(2) the Inmate Trust Fund, P.O. Box 629, Huntsville, Texas 77342-0629, Fax: 936-437-4793; and

(3) the District Clerk for the Eastern District of Texas, 211 West Ferguson, Tyler, Texas 75702, Attention: Manager of the Three-Strikes List.

SIGNED on April 18, 2011, at Houston, Texas.

A handwritten signature in black ink, appearing to read 'Lee H. Rosenthal', written over a horizontal line.

Lee H. Rosenthal
United States District Judge